


Doc Code: AP.PRE.REQ

PTO/SB/33 (09-08)
Approved for use through 10/31/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2000874.00153US1	
	Application Number 10/624,098-Conf. #6122	Filed July 21, 2003	
	First Named Inventor Brad BOWMAN et al.		
	Art Unit 3626	Examiner K. K. Rapillo	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>32,590</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p> _____ Signature</p> <p>Eric L. Prah _____ Typed or printed name</p> <p>(617) 526-6000 _____ Telephone number</p> <p>April 16, 2009 _____ Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

The Examiner rejected claims 1-5, 7, and 12-16 under 35 U.S.C. §103(a) as being unpatentable over a the press release entitled “WellMed Introduces Industry’s First comprehensive Personal Health Management System Including Online Health Record” (WellMed, Inc., Oregon, August 23, 1999. PR Newswire) (hereinafter referred to as WellMed) in view of U.S. 5,827,180 to Goodman.

The Examiner argues that WellMed teaches the first step of claim 1, which reads in part:

...from each of a plurality of receiving users, receiving corresponding personal health message receiving criteria for determining messages to be received by that receiving user.

In support of her assertion, she directs our attention to paragraph 8 of WellMed. We note, however, that the cited passage does not disclose or even suggest “personal health message receiving criteria.” The passage reads as follows:

WellMed's Personal Health Manager enables consumers to retrieve data that is customized for their interests and conditions. For example, a woman who is trying to stop smoking can access WellMed's Personal Health Manager through one of WellMed's partner portals and assess her health status using WellMed's Health Quotient (HQ(TM)) tool. The profile then generates a personalized homepage containing new smoking patch information, exercise recommendations and allergy alerts based on risk factors and interests identified during the HQ test. She will also have the option to enroll in one of WellMed's tailored improvement programs, such as the smoking cessation plan, to help her stop smoking. [emphasis added].

To the extent that this passage is about criteria, it is about criteria for retrieving data for display on a personalized homepage. It does not discuss or even hint at “message receiving criteria” of the type recited in claim 1.

The Examiner also argues that WellMed teaches “from a transmitting user, receiving a message and personal health message transmitting criteria for directing the received message to other users.” And in support of this assertion she directs our attention to paragraph 9 of WellMed. We note, however, that this passage is about storing and monitoring health information. It does not, in fact, refer to “receiving a message and personal health message transmitting criteria,” as argued by the Examiner. The passage states as follows:

Using WellRecord, any individual can store and monitor health information online with complete security, confidentiality and privacy. Family health information, such as a child's immunization records or an elderly parent's prescription medications, can be

stored in WellRecord. This information can be easily accessed and provided to schools, new doctors and others. Additional news, information and access to online communities can be obtained through a password-protected personal health homepage. [emphasis added].

There is nothing in this passage about “message transmitting criteria for directing the received message to other users.” It does state that the stored information can be accessed by other users. But that occurs by allowing the other users, through the use of a shared password, to access a personal health homepage which contains the information.

The Examiner also argues that WellMed teaches “comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria to identify those users among the plurality of receiving users to whom the received message should be transmitted.” In support of this assertion she directs our attention to paragraph 16 of WellMed. But again we submit that this passage falls short of teaching the recited element. It is about instant messaging which is a communication technique that involves establishing a direct connection to the intended recipient. The cited passage states in full:

WellMed will also be introducing a customized instant messaging system for people with specific ailments. Individuals diagnosed with certain conditions can opt to be anonymously connected with other individuals in similar situations via their personal homepage. This is beneficial in the same way systems that match patients to clinical trials have been useful for physicians. [emphasis added].

Thus, the mechanism for identifying the intended recipient is the personal home page. There is no suggestion whatsoever that recipients are identified by “comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria,” as required by the claim.

We note that independent claim 12 includes limitations similar to those discussed above in connection with claim 1.

The Examiner rejected claims 23-26 under 35 U.S.C. § 103(a) as being unpatentable over Goodman in view of the press release entitled “WellMed Introduces Industry’s First comprehensive Personal Health Management System Including Online Health Record” (WellMed, Inc., Oregon, August 23, 1999. PR Newswire).

Regarding independent claim 23, the Examiner states that while Goodman teaches a computer-readable medium, he fails to teach a data structure comprising:

personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health message receiving criteria, the personal health message receiving criteria including personal or health characteristics relating to the receiving users; and

personal health message transmitting criteria associated with transmitting users for directing a selected message to other users whose personal health message receiving criteria conform to the personal health message transmitting criteria, the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users.

To supply that which is missing, the Examiner relies on WellMed. Applicants, however, believe that WellMed does not, in fact, supply these missing features for the reasons stated above.

For at least the reasons stated above, we believe that the claims are in condition for allowance and therefore ask that they be allowed to issue.